



September 24, 1999

Mr. Kevin McCalla
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-2697

Dear Mr. McCalla:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127525.

The Texas Natural Resource Commission (the "commission") received a request from an employee for that employee's personnel files, including records "in Austin, El Paso Region 6 office," as well as "all documents . . . and findings pertaining to the investigation" of the requestor's complaint. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.¹ You contend that some information in the commission's investigation file on the sexual harassment complaint is excepted from disclosure pursuant to a common-law right of privacy under section 552.101 of the Government Code. We have considered the exception and arguments you have raised and reviewed the submitted information.²

The commission states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The commission's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We assume that you will release other responsive records, such as the requestor's personnel records, to the extent they exist, since you have not raised any other exception nor submitted other records.

information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the affidavit of the person under investigation and the summary of the investigation, stating that the public’s interest was sufficiently served by the disclosure of these documents. *Id.* In concluding, the *Ellen* court held that “the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.*

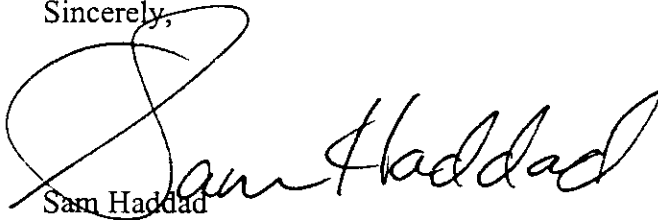
According to *Ellen*, the public has a legitimate interest in documents that adequately summarize sexual harassment allegations and the results of investigations into those allegations, but not in the identities or detailed statements of the victims and witnesses. *See id*; *see also* Open Records Decision Nos. 473 (1987), 470 (1987) (public has legitimate interest in job performance of public employees). After reviewing the commission’s “Investigation Report,” submitted as Exhibit C, we conclude that this report constitutes an adequate summary of the investigation. In accordance with *Ellen*, the commission must release the “Investigation Report,” along with the requestor’s statements, set out in the e-mail dated “5/25/99 10:59am,” but only after the commission has redacted the names of the witnesses and the victims who provided statements concerning the alleged “sexual harassment” during the course of the investigation.³ However, in this situation, information that relates to the requestor, who is the complainant and one of the alleged victims, may not

³We have marked the types of information within Exhibit C, consisting of names of the victims and witnesses, which your office should redact prior to releasing the information.

be withheld from her on the basis of protecting her own privacy interests. *See* Gov't Code § 552.023(a). Although identifying information about the requestor should not be redacted, identifying information about other victims and witnesses to the alleged sexual harassment must be withheld from disclosure.⁴ The remaining responsive information must be withheld pursuant to common-law privacy pursuant to *Ellen*.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 127525

encl. Submitted documents

cc: Ms. Celia G. Ornelas
4817 Flower Drive
El Paso, Texas 79905
(w/o enclosures)

⁴In this instance, the requestor is the victim of the alleged sexual harassment. Thus, she is entitled to information relating to herself. Gov't Code § 552.023 (right of access to records that contain information relating to person that are protected from public disclosure by laws intended to protect that person's privacy interests). Therefore, if the commission receives a request in the future, the commission should seek a ruling from this office and reassert its privacy exception before releasing any of the requested information. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).